

Notice of Allowability	Application No.	Applicant(s)	
	09/924,926	SAID, AMIR	
	Examiner	Art Unit	
	Fred Ferris	2128	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 27 November 2006.
2. ☒ The allowed claim(s) is/are 1-23.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

**FRED FERRIS
PRIMARY EXAMINER
TECHNOLOGY CENTER 2100**



DETAILED ACTION

1. *This Office Action is responsive to applicant's amendment filed 27 November 2006. Amended claims 1-23 remain pending in this application and have now been allowed over the prior art of record.*

EXAMINER'S AMENDMENT

2. *An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.*

The application has been amended as follows:

In the Specification:

*On page 4, paragraph [0021], line 6, **delete** the phrase "(Attorney docket no. PDNO 10006298-1)" and **insert** the phrase 09/912278 **before** the phrase "filed July 24, 2001"*

Response to Arguments

3. *Applicant's arguments filed 27 November 2006 have been fully considered and found to be persuasive. The previous 35 USC § 101 and 103(a) rejections are now withdrawn in view of applicant's amendment to independent claims 1, 13, and 23 and supporting arguments filed 27 November 2006.*

Allowable Subject Matter

4. Claims 1-23 have now been allowed over the prior art of record.

The following is an examiner's statement of reasons for allowance:

Applicants are disclosing a method, system, and computer code for identifying at least one predominant color in a digital image that includes testing randomly selected specific colors based on statistical probability. This has been disclosed in the prior art of record.

While these elements are individually disclosed in the prior art, the prior art of record does not meet the conditions as suggested in MPEP section 2132, namely:

"The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e., identity of terminology is not required. In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990)."

In particular, the prior art of record does not disclose the specific arrangement of elements sequence of method steps that includes the combination of identifying at least one predominant color in a digital image by applying a detection rule to randomly selected pixels in the image to reduce the probability of at least on false-positive and a false-negative outcome as now required by independent claims 1, 13, and 23. (See: specification paragraphs 0008, 0032-0034, for example)

The closest prior art uncovered during examination teaches certain limitations of the claimed invention as follows:

- US Patent 5,853,625 issued to Fitzpatrick: teaches identifying at least one predominate color in a digital image and applying a detection rule to randomly-selected pixels in the image. However, Fitzpatrick does not explicitly disclose the combination of identifying at least one predominant color in a digital image by applying a detection rule to randomly selected pixels in the image to reduce the probability of at least on false-positive and a false-negative outcome as now required by independent claims 1, 13, and 23.

- U.S. Patent 5,891,394 issued to Drocourt: teaches minimizing the probability of obtaining false-positive and/or false-negative results and analyzing digital samples along a stored scan line, but again does not teach the combination of identifying at least one predominant color in a digital image by applying a detection rule to randomly selected pixels in the image to reduce the probability of at least on false-positive and a false-negative outcome as now required by independent claims 1, 13, and 23.

The features noted above render the claimed invention non-obvious over the prior art of record. Dependent claims 1-12, and 14-22 are deemed allowable as being dependent from independent claims 1, and 13 respectively.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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5. *Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fred Ferris whose telephone number is 571-272-3778 and whose normal working hours are 8:30am to 5:00pm Monday to Friday. Any inquiry of a general nature relating to the status of this application should be directed to the group receptionist whose telephone number is 571-272-3700. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamini Shah can be reached at 571-272-2279. The Official Fax Number is: (571) 272 8300*

*Fred Ferris, Primary Examiner
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11 November 2006*


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